

105TH CONGRESS
2D SESSION

H. R. 4539

To amend the Immigration and Nationality Act to establish a Board of Visa Appeals within the Department of State to review decisions of consular officers concerning visa applications, revocations and cancellations.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 1998

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to establish a Board of Visa Appeals within the Department of State to review decisions of consular officers concerning visa applications, revocations and cancellations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consular Review Act
5 of 1998”.

1 **SEC. 2. ESTABLISHMENT OF A BOARD OF VISA APPEALS.**

2 (a) IN GENERAL.—The Immigration and Nationality
3 Act is amended by inserting after section 224 the following
4 new section:

5 “BOARD OF VISA APPEALS

6 “SEC. 225. (a) ESTABLISHMENT.—The Secretary of
7 State shall establish within the Department of State a
8 Board of Visa Appeals. The Board shall be composed of
9 5 members who shall be appointed by the Secretary. No
10 more than 2 members of the Board may be consular offi-
11 cers. The Secretary shall designate a member who shall
12 be chairperson of the Board.

13 “(b) AUTHORITY AND FUNCTIONS.—The Board shall
14 have authority to review any discretionary decision of a
15 consular officer with respect to an alien concerning the
16 denial, revocation, or cancellation of an immigrant visa
17 and of a nonimmigrant visa or petition and the denial of
18 an application for waiver of one or more grounds of inad-
19 missibility under section 212. The review of the Board
20 shall be made upon the record for decision of the consular
21 officer, including all documents, notes, and memoranda
22 filed with the consular officer, supplemented by affidavits
23 and other writings if offered by the consular officer or
24 alien. Upon a conclusive showing that the decision of the
25 consular official is contrary to the preponderance of the
26 evidence, the Board shall have authority to overrule, or

1 remand for further consideration, the decision of such con-
2 sular officer.

3 “(c) PROCEDURE.—Proceedings before the Board
4 shall be in accordance with such regulations, not inconsis-
5 tent with this Act and sections 556 and 557 of title 5,
6 United States Code, as the Secretary of State shall pre-
7 scribe. Such regulations shall include requirements that
8 provide that—

9 “(1) at the time of any decision of a consular
10 officer under subsection (b), an alien, attorney of
11 record, and any interested party defined in sub-
12 section (d) shall be given notice of the availability of
13 the review process and the necessary steps to re-
14 quest such review;

15 “(2) a written record of the proceedings and de-
16 cision of the consular officer (in accordance with sec-
17 tions 556 and 557) shall be available to the Board,
18 and on payment of lawfully prescribed costs, shall be
19 made available to the alien;

20 “(3) upon receipt of request for review under
21 this section, the Board shall, within 30 days, notify
22 the consular officer with respect to whose decision
23 review is sought, and, upon receipt of such notice,
24 such officer shall promptly (but in no event more
25 than 30 days after such receipt) forward to the

1 Board the record of proceeding as described in sub-
2 section (b);

3 “(4) the appellant shall be given notice, reason-
4 able under all the circumstances of the time and
5 place at which the Board proceedings will be held;

6 “(5) the appellant may be represented (at no
7 expense to the Government) by such counsel, author-
8 ized to practice in such proceedings, as the appellant
9 shall choose; and

10 “(6) a request for review under this section
11 must be made in writing to the Board within 60
12 days after receipt of notice of the denial, revocation
13 or cancellation.

14 “(d) INTERESTED PARTIES.—The Board shall review
15 each decision described in subsection (b) upon request of
16 the alien or any of the following interested parties:

17 “(1) The petitioner or beneficiary of an immi-
18 grant visa petition approved under section 203(a),
19 203(b)(1), 203(b)(4), 203(b)(5), 203(c), or the peti-
20 tioner of an immigrant visa petition approved under
21 sections 203(b)(2) and 203(b)(3).

22 “(2) The petitioner of a nonimmigrant visa peti-
23 tion.

24 “(3) The postsecondary educational institution
25 approved for the attendance of nonimmigrant stu-

1 dents under section 101(a)(15)(F)(i) or
2 101(a)(15)(M)(i) which has provided notice of the
3 acceptance of the alien in its program.

4 “(4) A recognized international agency or orga-
5 nization approved as a program sponsor under sec-
6 tion 101(a)(15)(J) which has provided notice of the
7 acceptance of the alien in its program.

8 “(5) A treaty investor or trader individual or
9 organization in the United States that, under section
10 101(a)(15)(E), has made an offer of employment to
11 an alien to perform executive or supervisory manage-
12 ment functions.

13 “(e) LIMITATION.—A review may not be requested
14 under this section more than once in any 24 month period.

15 “(f) CONSTRUCTION.—This section may not be con-
16 strued to restrict any right to further administrative or
17 judicial review established under any other provision of
18 law.

19 “(g) FEES.—The Secretary of State shall charge, and
20 collect, an appropriate fee associated with a request to the
21 Board for a review. Such fee shall be sufficient to cover
22 the cost of the administration of this section.”.

23 (b) EFFECTIVE DATES.—

1 (1) The amendment made by subsection (a)
2 shall take effect 120 days after the date of the en-
3 actment of this Act.

4 (2) Proposed regulations with respect to the
5 amendment made by subsection (a) shall be promul-
6 gated not later than 30 days after the date of the
7 enactment of this Act.

8 (3) Members of the Board of Visa Appeals
9 under section 225 of the Immigration and National-
10 ity Act (as inserted by subsection (a)) shall be ap-
11 pointed not later than 120 days after the date of the
12 enactment of this Act.

13 (c) TECHNICAL AMENDMENTS.—

14 (1) Section 222(f) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1202(f)) is amended—

16 (A) by striking “except that” and all that
17 follows up to the period; and

18 (B) by adding at the end: “An interested
19 party under section 225(d) or court shall be
20 permitted to inspect the record of proceeding as
21 described in subsections (c)(2) and (c)(3) of
22 section 225.”.

23 (2) Section 104(a)(1) of such Act (8 U.S.C.
24 1104(a)(1)) is amended by striking the “except” and
25 inserting “including”.

- 1 (3) The table of contents of such Act is amend-
2 ed by inserting after the item relating to section 224
3 the following new item:

“Sec. 225. Board of Visa Appeals.”.

